determine dischargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must also follow that the bankruptcy court may also render a money judgment . . . because equitable jurisdiction attaches to the entire cause of action . . .").

Whether a bankruptcy court may exercise supplemental jurisdiction over a state-law dispute absent "related to" jurisdiction under section 1334, in order to enter judgment against a debtor following a determination that the claim is non-dischargeable, is thus currently dependent only upon the location of the court in which a debtor files his or her bankruptcy petition. The split among the circuits on this issue engenders conflicting rulings among the lower federal courts and prevents the creation of a uniform body of law upon which debtors can rely. This is an important consideration given Congress' authority to establish "uniform laws on the subject of bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4. This Court should grant Petitioner's writ to resolve this issue.

II. REQUIRING A DEBTOR TO DEFEND AGAINST LITIGATION UNRELATED TO THE BANKRUPTCY ESTATE DURING THE COURSE OF A BANKRUPTCY CASE DEFEATS THE FUNDAMENTAL PURPOSES OF THE BANKRUPTCY CODE

A bankruptcy court's dischargeability determination is a "question of federal law independent of the issue of the validity of the underlying claim." *Grogan v. Garner*, 498 U.S. 279, 289 (1991). *See also Sill v. Sweeney (In re Sweeney)*, 276 B.R. 186, 195 (6th Cir. B.A.P. 2002) (Dischargeability is "a matter separate from the merits of the debt itself"). "A dischargeability action under [Section 523] encompasses 'two distinct claims: (1)

whether the debtor owes a debt to the plaintiff and (2) whether the debt owed by the debtor to the plaintiff is nondischargeable.'" *Sweeney*, 276 B.R. at 195 (quoting *Jorge v. Mannie (In re Mannie)*, 258 B.R. 440, 444-45 (Bankr. N.D. Cal. 2001).) The bankruptcy court's inquiry thus consists exclusively of a summary examination of the *nature* of the debt sought to be exempted from discharge, and need not delve into the merits of the underlying state-law claim.

Forcing a debtor to engage in litigation during the course of his or her bankruptcy regarding a non-priority, non-dischargeable claim that, by definition, cannot impact the estate eliminates the very protections that filing a bankruptcy petition is meant to provide. Yet, this is precisely the outcome that results from a bankruptcy court's exercise of "supplemental jurisdiction" over claims for which it otherwise lacks jurisdiction under section 1334. In particular, requiring debtors to defend, in bankruptcy court, litigation over an underlying state-law claim that cannot be discharged in bankruptcy works a significant hardship on debtors who, because of their limited resources, seek bankruptcy protection as a means of relief from creditor collection efforts and general financial pressures. The bankruptcy court is transformed from a sanctuary for debtors in dire financial straits into a means by which creditors can obtain expedited judgments against debtors who lack adequate resources to sufficiently defend against the claims. Such a result surely was not intended by Congress when it enacted the Bankruptcy Code.

Congress' intent to shield debtors from collection efforts and general financial pressures during the course of a bankruptcy case is illustrated by its enactment of the automatic stay provision set forth in 11 U.S.C. § 362, "[o]ne of the fundamental debtor protections provided by the bankruptcy laws." S.Rep. No. 95-989, 95th Cong., 2d Sess. 54-55 (1978),

reprinted in 1978 U.S.C.C.A.N. 5787, 5840-41. The automatic stay evinces Congress' view that a debtor requires "a breathing spell from its creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy." *Id.* *See also In re Zinchiak*, 406 F.3d 214, 219 n.2 (3d Cir. 2005) ("'The automatic stay serves several purposes, including 'providing debtor a breathing spell from creditors by stopping all collection efforts . . .' as well as protecting 'creditors by preventing particular creditors from acting unilaterally to obtain payment from a debtor to the detriment of other creditors'") (quotation omitted); *Winters By and Through McMahon v. George Mason Bank*, 94 F.3d 130, 133 (4th Cir. 1996) ("The purpose of the automatic stay. . . is to shield the debtor from financial pressure during the pendency of the bankruptcy proceeding") (citing *In re Stringer*, 847 F.2d 549 (9th Cir. 1988)).

These important protections provided by the automatic stay no longer exist if a bankruptcy court may exercise "supplemental jurisdiction" under section 1367 and force a debtor to expend additional resources to litigate the merits of a claim underlying a non-dischargeable debt. Allowing creditors to litigate the merits of claims that are unrelated to the bankruptcy estate (and thus could be handled once the bankruptcy case has been closed) perpetuates increased litigation and collection efforts on the part of creditors during the pendency of a bankruptcy case, contrary to the "breathing spell" from collection efforts intended by the Bankruptcy Code. Typical consumer debtors simply lack the financial means to engage in protracted litigation – one reason for seeking bankruptcy protection in the first place. Low and moderate-income debtors have reason to be particularly concerned with such litigation, as they

may ultimately be coerced into settling claims they cannot afford to pay during the course of their bankruptcy case, on terms less favorable than the debtor might obtain once it has received a "fresh start" from the remainder of its debts.

Limiting a bankruptcy court's ability to enter judgments against a debtor based on non-dischargeable state law claims does not give debtor a "free pass" from the debt – rather, debtor must ultimately face the music post-bankruptcy, when the creditor seeks to obtain a judgment (or to enforce a pre-petition state court judgment) against debtor in a court of competent jurisdiction with respect to the state law claim, which (if entered) debtor must pay from post-bankruptcy assets. But such a scenario is preferable to one in which debtors drowning in debt and seeking, with bankruptcy court assistance, a means to satisfy creditors of the estate from their limited assets, must also concern themselves during the course of the bankruptcy case with collection efforts by creditors whose claims should not impact the bankruptcy.

The overall objective of the Bankruptcy Code – the "prompt and effectual administration of the estate of all bankrupts within a limited period" (*Katchen v. Landy*, 382 U.S. 323, 328-29 (1966)) – is likewise not served by permitting bankruptcy courts to exercise supplemental jurisdiction in this circumstance. Resolving state law claims underlying a non-dischargeable debt are irrelevant to the administration of a bankrupt's estate. Thus, scarce federal judicial resources are needlessly expended as bankruptcy judges address matters that Congress intended should be left to the state courts. Moreover, permitting litigation of such claims in bankruptcy court serves only to prolong the duration of a bankruptcy case, to the detriment of creditors who await recovery from the bankruptcy estate. Finally, debtors and the

bankruptcy court will suffer as their attention is turned from core matters attendant to case administration, such as marshaling assets and developing a plan for paying creditors of the estate, to dealing with matters that have no impact on the estate at all.

CONCLUSION

Certiorari is appropriate where, as here, a division among the courts of appeal regarding the extent of a bankruptcy court's jurisdiction has created a situation where certain debtors, by virtue of the circuit where they file a bankruptcy petition, may lose the primary benefit of seeking bankruptcy relief: a "breathing spell" from the debtor's creditors and relief from the financial pressures that drove the debtor into bankruptcy. The petition for writ of certiorari should be granted.

Respectfully submitted,

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